

AMENDED IN SENATE AUGUST 31, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 610

Introduced by Assembly Member Price

February 21, 2007

An act to amend, *repeal, and add* Sections 14030, 14037, 14070, and 14076 of the Corporations Code, relating to small businesses.

LEGISLATIVE COUNSEL'S DIGEST

AB 610, as amended, Price. Small Business Expansion Fund.

The California Small Business Financial Development Corporation Law authorizes the formation of small business financial development corporations to grant loans or loan guarantees for the purpose of stimulating small business development and imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, which is created under that law and is continuously appropriated, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations. Existing law specifies that the amount of guarantee liability outstanding at any one time shall not exceed 4 times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the fund to another fund in state government, as specified. Existing law imposes a similar leverage ratio on the amount of guarantee liability outstanding with respect to a corporation's trust fund account. Existing law authorizes the director to authorize a corporation to exceed these specified leverage ratios pending annual reallocation of funds; however, a corporation

may not exceed an outstanding guarantee liability of more than 5 times its funds on deposit.

This bill would instead limit the amount of guarantee liability outstanding with respect to these funds to 5 times the amount of funds on deposit in the expansion fund or in a corporation's trust fund account and would delete the provision authorizing the director to allow a corporation to exceed that leverage ratio.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14030 of the Corporations Code is
2 amended to read:

3 14030. (a) There is hereby created in the State Treasury the
4 California Small Business Expansion Fund. All or a portion of the
5 funds in the expansion fund may be paid out, with the approval of
6 the Department of Finance, to a lending institution or financial
7 company that will act as trustee of the funds. The expansion fund
8 and the trust fund shall be used to pay for defaulted loan guarantees
9 issued pursuant to Article 9 (commencing with Section 14070),
10 administrative costs of corporations, and those costs necessary to
11 protect a real property interest in a defaulted loan or guarantee.
12 The amount of guarantee liability outstanding at any one time shall
13 not exceed five times the amount of funds on deposit in the
14 expansion fund plus any receivables due from funds loaned from
15 the expansion fund to another fund in state government as directed
16 by the Department of Finance pursuant to a statute enacted by the
17 Legislature, including each of the trust fund accounts within the
18 trust fund.

19 (b) *This section shall remain in effect only until January 1, 2013,*
20 *and as of that date is repealed, unless a later enacted statute, that*
21 *is enacted before January 1, 2013, deletes or extends that date.*

22 SEC. 2. Section 14030 is added to the Corporations Code, to
23 read:

24 14030. (a) *There is hereby created in the State Treasury the*
25 *California Small Business Expansion Fund. All or a portion of the*
26 *funds in the expansion fund may be paid out, with the approval of*
27 *the Department of Finance, to a lending institution or financial*
28 *company that will act as trustee of the funds. The expansion fund*

1 *and the trust fund shall be used to pay for defaulted loan*
2 *guarantees issued pursuant to Article 9 (commencing with Section*
3 *14070), administrative costs of corporations, and those costs*
4 *necessary to protect a real property interest in a defaulted loan*
5 *or guarantee. The amount of guarantee liability outstanding at*
6 *any one time shall not exceed four times the amount of funds on*
7 *deposit in the expansion fund plus any receivables due from funds*
8 *loaned from the expansion fund to another fund in state government*
9 *as directed by the Department of Finance pursuant to a statute*
10 *enacted by the Legislature, including each of the trust fund*
11 *accounts within the trust fund, unless the director has permitted*
12 *a higher leverage ratio for an individual corporation pursuant to*
13 *subdivision (b) of Section 14037.*

14 *(b) This section shall become operative on January 1, 2013.*

15 ~~SEC. 2.~~

16 SEC. 3. Section 14037 of the Corporations Code is amended
17 to read:

18 14037. (a) The state shall not be liable or obligated in any way
19 beyond the state money that is allocated and deposited in the trust
20 fund account from state money and that is appropriated for these
21 purposes.

22 (b) The director may reallocate funds held within a corporation's
23 trust fund account. The director shall reallocate funds based on
24 which corporation is most effectively using its guarantee funds. If
25 funds are withdrawn from a less effective corporation as part of a
26 reallocation, the office shall make that withdrawal only after giving
27 consideration to that corporation's fiscal solvency, its ability to
28 honor loan guarantee defaults, and its ability to maintain a viable
29 presence within the region it serves. Reallocation of funds shall
30 occur no more frequently than once per fiscal year. Any decision
31 made by the director pursuant to this subdivision may be appealed
32 to the board. The board has authority to repeal or modify any
33 decision to reallocate funds.

34 *(c) This section shall remain in effect only until January 1, 2013,*
35 *and as of that date is repealed, unless a later enacted statute, that*
36 *is enacted before January 1, 2013, deletes or extends that date.*

37 SEC. 4. Section 14037 is added to the Corporations Code, to
38 read:

39 14037. (a) The state shall not be liable or obligated in any
40 way beyond the state money that is allocated and deposited in the

1 trust fund account from state money and that is appropriated for
2 these purposes.

3 (b) The director may reallocate funds held within a
4 corporation's trust fund account.

5 (1) The director shall reallocate funds based on which
6 corporation is most effectively using its guarantee funds. If funds
7 are withdrawn from a less effective corporation as part of a
8 reallocation, the office shall make that withdrawal only after giving
9 consideration to that corporation's fiscal solvency, its ability to
10 honor loan guarantee defaults, and its ability to maintain a viable
11 presence within the region it serves. Reallocation of funds shall
12 occur no more frequently than once per fiscal year. Any decision
13 made by the director pursuant to this subdivision may be appealed
14 to the board. The board has authority to repeal or modify any
15 decision to reallocate funds.

16 (2) The director may authorize a corporation to exceed the
17 leverage ratio specified in Section 14030, subdivision (b) of Section
18 14070, and subdivision (a) of Section 14076 pending the annual
19 reallocation of funds pursuant to this section. However, no
20 corporation shall be permitted to exceed an outstanding guarantee
21 liability of more than five times its portion of funds on deposit in
22 the expansion fund.

23 (c) This section shall become operative on January 1, 2013.

24 ~~SEC. 3.~~

25 SEC. 5. Section 14070 of the Corporations Code is amended
26 to read:

27 14070. (a) The corporate guarantee shall be backed by funds
28 on deposit in the corporation's trust fund account, or by receivables
29 due from funds loaned from the corporation's trust fund account
30 to another fund in state government as directed by the Department
31 of Finance pursuant to a statute enacted by the Legislature.

32 (b) Loan guarantees shall be secured by a reserve of at least 20
33 percent to be determined by the director.

34 (c) The expansion fund and trust fund accounts shall be used
35 exclusively to guarantee obligations and pay the administrative
36 costs of the corporations. A corporation located in a rural area may
37 utilize the funds for direct lending to farmers as long as at least 90
38 percent of the corporate fund farm loans, calculated by dollar
39 amount, and all expansion fund farm loans are guaranteed by the
40 United States Department of Agriculture. The amount of funds

1 available for direct farm lending shall be determined by the
2 director. In its capacity as a direct lender, the corporation may sell
3 in the secondary market the guaranteed portion of each loan so as
4 to raise additional funds for direct lending. The agency shall issue
5 regulations governing these direct loans, including the maximum
6 amount of these loans.

7 (d) In furtherance of the purposes of this part, up to one-half of
8 the trust funds may be used to guarantee loans utilized to establish
9 a Business and Industrial Development Corporation (BIDCO)
10 under Division 15 (commencing with Section 33000) of the
11 Financial Code.

12 (e) To execute the direct loan programs established in this
13 chapter, the director may loan trust funds to a corporation located
14 in a rural area for the express purpose of lending those funds to an
15 identified borrower. The loan authorized by the director to the
16 corporation shall be on terms similar to the loan between the
17 corporation and the borrower. The amount of the loan may be in
18 excess of the amount of a loan to any individual farm borrower,
19 but actual disbursements pursuant to the agency loan agreement
20 shall be required to be supported by a loan agreement between the
21 farm borrower and the corporation in an amount at least equal to
22 the requested disbursement. The loan between the agency and the
23 corporation shall be evidenced by a credit agreement. In the event
24 that any loan between the corporation and borrower is not
25 guaranteed by a governmental agency, the portion of the credit
26 agreement attributable to that loan shall be secured by assignment
27 of any note, executed in favor of the corporation by the borrower
28 to the agency. The terms and conditions of the credit agreement
29 shall be similar to the loan agreement between the corporation and
30 the borrower, which shall be collateralized by the note between
31 the corporation and the borrower. In the absence of fraud on the
32 part of the corporation, the liability of the corporation to repay the
33 loan to the agency is limited to the repayment received by the
34 corporation from the borrower except in a case where the United
35 States Department of Agriculture requires exposure by the
36 corporation in rule or regulation. The corporation may use trust
37 funds for loan repayment to the agency if the corporation has
38 exhausted a loan loss reserve created for this purpose. Interest and
39 principal received by the agency from the corporation shall be

1 deposited into the same account from which the funds were
2 originally borrowed.

3 (f) Upon the approval of the director, a corporation shall be
4 authorized to borrow trust funds from the agency for the purpose
5 of relending those funds to small businesses. A corporation shall
6 demonstrate to the director that it has the capacity to administer a
7 direct loan program, and has procedures in place to limit the default
8 rate for loans to startup businesses. Not more than 25 percent of
9 any trust fund account shall be used for the direct lending
10 established pursuant to this subdivision. A loan to a corporation
11 shall not exceed the amount of funds likely to be lent to small
12 businesses within three months following the loan to the
13 corporation. The maximum loan amount to a small business is fifty
14 thousand dollars (\$50,000). In the absence of fraud on the part of
15 the corporation, the repayment obligation pursuant to the loan to
16 the corporation shall be limited to the amount of funds received
17 by the corporation for the loan to the small business and any other
18 funds received from the agency that are not disbursed. The
19 corporation shall be authorized to charge a fee to the small business
20 borrower, in an amount determined by the director pursuant to
21 regulation. The program provided for in this subdivision shall be
22 available in all geographic areas of the state.

23 (g) *This section shall remain in effect only until January 1, 2013,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2013, deletes or extends that date.*

26 SEC. 6. *Section 14070 is added to the Corporations Code, to*
27 *read:*

28 14070. (a) *The corporate guarantee shall be backed by funds*
29 *on deposit in the corporation's trust fund account, or by*
30 *receivables due from funds loaned from the corporation's trust*
31 *fund account to another fund in state government as directed by*
32 *the Department of Finance pursuant to a statute enacted by the*
33 *Legislature.*

34 (b) *Loan guarantees shall be secured by a reserve of at least*
35 *25 percent to be determined by the director, unless the director*
36 *authorizes a higher leverage ratio for an individual corporation*
37 *pursuant to subdivision (b) of Section 14037.*

38 (c) *The expansion fund and trust fund accounts shall be used*
39 *exclusively to guarantee obligations and pay the administrative*
40 *costs of the corporations. A corporation located in a rural area*

1 may utilize the funds for direct lending to farmers as long as at
2 least 90 percent of the corporate fund farm loans, calculated by
3 dollar amount, and all expansion fund farm loans are guaranteed
4 by the United States Department of Agriculture. The amount of
5 funds available for direct farm lending shall be determined by the
6 director. In its capacity as a direct lender, the corporation may
7 sell in the secondary market the guaranteed portion of each loan
8 so as to raise additional funds for direct lending. The agency shall
9 issue regulations governing these direct loans, including the
10 maximum amount of these loans.

11 (d) In furtherance of the purposes of this part, up to one-half of
12 the trust funds may be used to guarantee loans utilized to establish
13 a Business and Industrial Development Corporation (BIDCO)
14 under Division 15 (commencing with Section 33000) of the
15 Financial Code.

16 (e) To execute the direct loan programs established in this
17 chapter, the director may loan trust funds to a corporation located
18 in a rural area for the express purpose of lending those funds to
19 an identified borrower. The loan authorized by the director to the
20 corporation shall be on terms similar to the loan between the
21 corporation and the borrower. The amount of the loan may be in
22 excess of the amount of a loan to any individual farm borrower,
23 but actual disbursements pursuant to the agency loan agreement
24 shall be required to be supported by a loan agreement between
25 the farm borrower and the corporation in an amount at least equal
26 to the requested disbursement. The loan between the agency and
27 the corporation shall be evidenced by a credit agreement. In the
28 event that any loan between the corporation and borrower is not
29 guaranteed by a governmental agency, the portion of the credit
30 agreement attributable to that loan shall be secured by assignment
31 of any note, executed in favor of the corporation by the borrower
32 to the agency. The terms and conditions of the credit agreement
33 shall be similar to the loan agreement between the corporation
34 and the borrower, which shall be collateralized by the note between
35 the corporation and the borrower. In the absence of fraud on the
36 part of the corporation, the liability of the corporation to repay
37 the loan to the agency is limited to the repayment received by the
38 corporation from the borrower except in a case where the United
39 States Department of Agriculture requires exposure by the
40 corporation in rule or regulation. The corporation may use trust

1 funds for loan repayment to the agency if the corporation has
2 exhausted a loan loss reserve created for this purpose. Interest
3 and principal received by the agency from the corporation shall
4 be deposited into the same account from which the funds were
5 originally borrowed.

6 (f) Upon the approval of the director, a corporation shall be
7 authorized to borrow trust funds from the agency for the purpose
8 of relending those funds to small businesses. A corporation shall
9 demonstrate to the director that it has the capacity to administer
10 a direct loan program, and has procedures in place to limit the
11 default rate for loans to startup businesses. Not more than 25
12 percent of any trust fund account shall be used for the direct
13 lending established pursuant to this subdivision. A loan to a
14 corporation shall not exceed the amount of funds likely to be lent
15 to small businesses within three months following the loan to the
16 corporation. The maximum loan amount to a small business is fifty
17 thousand dollars (\$50,000). In the absence of fraud on the part of
18 the corporation, the repayment obligation pursuant to the loan to
19 the corporation shall be limited to the amount of funds received
20 by the corporation for the loan to the small business and any other
21 funds received from the agency that are not disbursed. The
22 corporation shall be authorized to charge a fee to the small
23 business borrower, in an amount determined by the director
24 pursuant to regulation. The program provided for in this
25 subdivision shall be available in all geographic areas of the state.

26 (g) This section shall become operative on January 1, 2013.

27 ~~SEC. 4.~~

28 SEC. 7. Section 14076 of the Corporations Code is amended
29 to read:

30 14076. (a) It is the intent of the Legislature that the
31 corporations make maximal use of their statutory authority to
32 guarantee loans and surety bonds, including the authority to secure
33 loans with a minimum loan loss reserve of only 20 percent, so that
34 the financing needs of small business may be met as fully as
35 possible within the limits of corporations' loan loss reserves. The
36 agency shall report annually to the Legislature on the financial
37 status of the corporations and their portfolio of loans and surety
38 bonds guaranteed.

39 (b) Any corporation that serves an area declared to be in a state
40 of emergency by the Governor or a disaster area by the President

1 of the United States, the Administrator of the United States Small
2 Business Administration, or the United States Secretary of
3 Agriculture shall increase the portfolio of loan guarantees where
4 the dollar amount of the loan is less than one hundred thousand
5 dollars (\$100,000), so that at least 15 percent of the dollar value
6 of loans guaranteed by the corporation is for those loans. The
7 corporation shall comply with this requirement within one year of
8 the date the emergency or disaster is declared. Upon application
9 of a corporation, the director may waive or modify the rule for the
10 corporation if the corporation demonstrates that it made a good
11 faith effort to comply and failed to locate lending institutions in
12 the region that the corporation serves that are willing to make
13 guaranteed loans in that amount.

14 *(c) This section shall remain in effect only until January 1, 2013,*
15 *and as of that date is repealed, unless a later enacted statute, that*
16 *is enacted before January 1, 2013, deletes or extends that date.*

17 SEC. 8. Section 14076 is added to the Corporations Code, to
18 read:

19 14076. (a) It is the intent of the Legislature that the
20 corporations make maximal use of their statutory authority to
21 guarantee loans and surety bonds, including the authority to secure
22 loans with a minimum loan loss reserve of only 25 percent, unless
23 the agency authorizes a higher leverage ratio for an individual
24 corporation pursuant to subdivision (b) of Section 14037, so that
25 the financing needs of small business may be met as fully as
26 possible within the limits of corporations' loan loss reserves. The
27 agency shall report annually to the Legislature on the financial
28 status of the corporations and their portfolio of loans and surety
29 bonds guaranteed.

30 (b) Any corporation that serves an area declared to be in a state
31 of emergency by the Governor or a disaster area by the President
32 of the United States, the Administrator of the United States Small
33 Business Administration, or the United States Secretary of
34 Agriculture shall increase the portfolio of loan guarantees where
35 the dollar amount of the loan is less than one hundred thousand
36 dollars (\$100,000), so that at least 15 percent of the dollar value
37 of loans guaranteed by the corporation is for those loans. The
38 corporation shall comply with this requirement within one year
39 of the date the emergency or disaster is declared. Upon application
40 of a corporation, the director may waive or modify the rule for the

- 1 *corporation if the corporation demonstrates that it made a good*
- 2 *faith effort to comply and failed to locate lending institutions in*
- 3 *the region that the corporation serves that are willing to make*
- 4 *guaranteed loans in that amount.*
- 5 *(c) This section shall become operative on January 1, 2013.*